

OPEN MEETING ITEM

ORIGINAL



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

SEP - 7 2006

DATE: September 7, 2006

DOCKET NO: WS-02987A-05-0695

TO ALL PARTIES:

DOCKETED BY

NR

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

**JOHNSON UTILITIES COMPANY, LLC
(CC&N EXTENSION)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

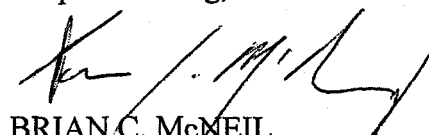
SEPTEMBER 15, 2006

10-day period for filing of exceptions has been waived.

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

SEPTEMBER 19 AND 20, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931


BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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AZ CORP COMMISSION
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES COMPANY, LLC FOR
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. WS-02987A-05-0695

DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: April 24, 2006

10 PLACE OF HEARING: Phoenix, Arizona

11 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

12 APPEARANCES: Richard L. Sallquist, SALLQUIST, DRUMMOND &
13 O'CONNOR, on behalf of Johnson Utilities Company,
L.L.C.; and

14 David Ronald, Staff Attorney, Legal Division, on behalf
15 of the Utilities Division of the Arizona Corporation
Commission.

16 **BY THE COMMISSION:**

17 On October 3, 2005, Johnson Utilities Company, L.L.C. ("JUC" or "Company") filed with the
18 Arizona Corporation Commission ("Commission") an application for an extension of its existing
19 Certificate of Convenience and Necessity ("CC&N") to provide water and wastewater service to an
20 approximately 640 acre area encompassing developments known as Silverado Ranch and Skyline
21 View Estates, in Pinal County, Arizona.

22 On November 1, 2005, JUC filed an Affidavit stating that notice of the application had been
23 mailed to all property owners in the affected area.

24 On November 2, 2005, the Commission's Utilities Division Staff ("Staff") filed an
25 Insufficiency Letter listing the areas in the application that Staff determined did not meet the
26 sufficiency requirements set forth in the Arizona Administrative Code ("A.A.C.").

27 JUC submitted additional information and documentation in support of its application on
28

1 December 16, 2005.

2 On February 8, 2006, Staff filed a Sufficiency Letter pursuant to A.A.C. R14-2-411(C) and
3 R14-2-610(C).

4 By Procedural Order issued February 9, 2006, this matter was scheduled for hearing on April
5 24, 2006, and JUC was ordered to notify all property owners in the affected area of the application
6 and the hearing date. The Company was also directed to publish notice of the application and hearing
7 date.

8 On March 31, 2006, JUC filed an Affidavit of Publication attesting that the required notice
9 had been published in the *Florence Reminder* and *Blade-Tribune*.

10 On April 3, 2006, Staff filed its Staff Report recommending approval of the application
11 subject to compliance with certain specified conditions.

12 On April 17, 2006, the Company filed Comments and Objections to the Staff Report, and
13 provided additional documentation in support of the application.

14 On April 21, 2006, the Company filed an Affidavit stating that that the required notice of the
15 hearing date had been mailed to all property owners in the affected area.

16 On April 24, 2006, the hearing was convened, as scheduled, before a duly authorized
17 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of
18 the hearing, the matter was taken under advisement pending issuance of a Recommended Opinion
19 and Order.

20 **FINDINGS OF FACT**

21 1. On October 3, 2005, JUC filed an application for an extension of its CC&N with the
22 Commission to provide public water and wastewater utility service to various parts of Pinal County,
23 Arizona, more fully described in Exhibit A hereto.

24 2. JUC is a public service corporation that provides water and wastewater service in
25 Pinal County, Arizona pursuant to an original CC&N granted in Decision No. 60223 (May 27,
26 1997). A number of CC&N extensions for water and/or wastewater service have been approved for
27 JUC in subsequent years. JUC served approximately 11,500 customers as of the end of July, 2005,
28 and its customer base is expanding at a pace of approximately 500 new service connections per

1 month.

2 3. Staff filed its Staff Report on April 3, 2006, recommending approval of the application
3 subject to certain conditions.

4 4. By its application, JUC seeks authority to extend its current CC&N to include two
5 separate planned area developments, Silverado Ranch and Skyline View Estates. Staff stated that,
6 based on historical growth rates, the Company's entire water service area could grow to
7 approximately 21,000 laterals by the end of five years. The Company projects that the developments
8 in the proposed extension area will result in approximately 2,108 additional connections at the end of
9 five years.

10 5. The extension area would be served by two of JUC's three water systems, the Sun
11 Valley and Johnson systems, which were recently interconnected. The third system is expected to be
12 interconnected by the end of 2006. The total production capacity of the Company's 12 wells is 5,082
13 gallons per minute ("gpm"). The JUC systems are also comprised of booster pumps, pressure tanks,
14 a distribution system, and approximately four million gallons of storage capacity. Staff's engineering
15 analysis concluded that the Company's system has adequate production and storage capacity to serve
16 the existing and proposed extension area (Ex. S-1, at 1). JUC currently has a Curtailment Tariff in
17 effect.

18 6. Pursuant to §208 of the federal Clean Water Act, each state is required to develop and
19 implement area-wide water quality management plans for pollution control purposes. The Central
20 Arizona Association of Governments ("CAAG") has been designated as the area-wide water quality
21 management planning agency for Pinal County. JUC has obtained CAAG §208 Water Quality Plan
22 approval to construct the Copper Basin Regional Wastewater Treatment Plant ("Copper Basin
23 WWTP"), which JUC plans to construct with an initial capacity of 500,000 gpd, with expansion of
24 the plant to 2.5 million gpd as population increases (See Decision No. 68237 at 6-7).

25 7. JUC currently operates three wastewater systems: Section 11; Precision; and Pecan.
26 According to the Company, the proposed extension area will be served by the Section 11 system,
27 which consists of a 1.6 million gpd extended aeration and aerobic lagoon treatment plant. However,
28 the wastewater flow from the extension area developments is expected to eventually be rerouted to

1 the proposed Copper Basin WWTP. Staff stated that, based on historical growth rates, the
2 Company's entire wastewater service area could grow to approximately 21,000 laterals by the end of
3 five years. The extension area is expected to add approximately 2,108 additional laterals by the end
4 of the five year period (Ex. S-1, Engineering Report at 2).

5 8. Staff stated that JUC's cost analysis indicates that, over the next five years, the
6 additional water plant needed to serve the extension area will total approximately \$2.7 million. Over
7 the same period, the additional wastewater plant to serve the extension area is anticipated to cost
8 approximately \$2.8 million. The Company expects that the facilities needed to serve the extension
9 area will be financed through advances in aid of construction and hook-up fees (*Id.*).

10 9. The Arizona Department of Environmental Quality ("ADEQ") indicated that JUC's
11 water system is currently delivering water that meets water quality standards required under A.A.C.
12 Title 18, Chapter 4. In addition, all of the Company's wells are in compliance with the new arsenic
13 maximum contaminant levels established by the United States Environmental Protection Agency (Ex.
14 S-1, at 1).

15 10. The Staff Report indicates that JUC is located within the Phoenix Active Management
16 Area ("AMA") and is in compliance with reporting and conservation requirements. Because the
17 extension area is located in the Phoenix AMA, each developer would be required to demonstrate an
18 assured water supply from the Arizona Department of Water Resources ("ADWR") for the entire
19 development. Since JUC currently holds a "Designation of Assured Water Supply" for its existing
20 area, Staff assumes the Company will continue to elect this alternative, thus requiring the Company
21 amend its Designation to include the extension area (*Id.*, Engineering Report at 4).

22 11. During public comment, the representative of Montalbano Homes (which is
23 developing the 560 acre Silverado Ranch subdivision) stated that no golf courses are planned for the
24 development and it is expected to "remain largely a native desert with the exception of the individual
25 parcels or lots for the homes and some predesignated community parks, community center type
26 facilities, but it will remain natural open washes" (Tr. 23-24). However, due to the remoteness of the
27 development, no reclaimed water is expected to be used for turf irrigation (*Id.*). The developer of the
28 smaller 80 acre Skyline View Estates indicated that there are no plans for a golf course and the

1 subdivision will employ desert landscaping (Tr. 24-25).

2 12. The Staff Report states that JUC was issued an Aquifer Protection Permit ("APP") in
3 1998 for its 1.6 MGD Section 11 wastewater treatment plant, and that the Company intends to
4 expand the plant to a 2.0 MGD capacity. At the hearing, JUC submitted its APP for the expansion of
5 the Section 11 plant from ADEQ (Ex. A-5).

6 13. In the Staff Report, Staff pointed out that Decision Nos. 68235 (October 25, 2005),
7 68236 (October 25, 2005), and 68237 (October 25, 2005) required JUC to obtain a \$500,000
8 performance bond "as a means of protection against any detrimental impact on customers that may
9 occur as a result of a judgment against Mr. Johnson and/or Johnson Utilities affiliates" related to the
10 so-called "La Osa"¹ and "Sonoran"² litigation. In lieu of obtaining a performance bond, JUC instead
11 secured an Irrevocable Letter of Credit which the Company seeks to have considered as an
12 appropriate substitute for the performance bond requirement set forth in the Decisions cited above³.
13 At the hearing in this matter, Staff indicated that it was satisfied with JUC's substitution of the Letter
14 of Credit for the performance bond requirement (Tr. 43).

15 14. Based on its investigation, as amended during the hearing, Staff recommended
16 approval of JUC's application, subject to compliance with the following recommendations:

- 17 a. The current rates and charges set forth in the tariffs of JUC should be
18 applied to all customers in the CC&N extension area approved herein
19 until the rates and charges are changed by Commission Order;
- 20 b. JUC be required to file with Docket Control, as a compliance item in
21 this docket, a copy of the ADEQ Approval to Construct for the water
22 system backbone facilities within 24 months of the effective date of
23 this Decision;
- 24 c. JUC be required to file with Docket Control, as a compliance item in
25 this docket, a copy of the ADEQ Approval to Construct for the
26 wastewater system backbone facilities within 24 months of the
27 effective date of this Decision;
- 28 d. JUC be required to file with Docket Control, as a compliance item in

¹ Maricopa County Superior Court Case No. CV2005-002692

² Maricopa County Superior Court Case No. CV2005-002548

³ A hearing on JUC's request to amend Decision Nos. 68235, 68236, and 68237, to permit substitution of the Letter of Credit, was held on August 25, 2006 and is currently pending issuance of a Recommended Opinion and Order.

1 this docket, a copy of the CAAG Section 208 Plan Amendment for the
2 Section 11 wastewater treatment plant within 24 months of the
effective date of this Decision;

3 e. JUC be required to file with Docket Control, as a compliance item in
4 this docket, a copy of the Aquifer Protection Permit and CAAG
5 Section 208 Plan Amendment for the Copper Basin Regional
Wastewater Treatment Facility, with 24 months of the effective date of
this Decision; and

6 f. In the event JUC fails to comply with the above-stated conditions
7 within the times specified, the CC&N extension approved herein
8 would, after due process, be deemed null and void.

9 15. Staff's recommendation for approval of the application is reasonable and shall be
10 adopted, subject to compliance with the conditions discussed herein. In addition, we will require that
11 JUC continue to comply with the reporting requirements for both the La Osa and Sonoran litigation
12 set forth in prior Decisions.

13 CONCLUSIONS OF LAW

14 1. JUC is a public service corporation within the meaning of Article XV of the Arizona
15 Constitution and A.R.S. §40-281 *et seq.*

16 2. The Commission has jurisdiction over JUC and the subject matter of the application.

17 3. Notice of the application was provided in accordance with law.

18 4. There is a public need and necessity for water and wastewater utility service in the
19 proposed extension area.

20 5. JUC is a fit and proper entity to receive an extension of its water and wastewater
21 CC&N to include the service area more fully described in Exhibit A attached hereto, subject to
22 compliance with the conditions set forth herein.

23 ORDER

24 IT IS THEREFORE ORDERED that the application of Johnson Utilities Company for an
25 extension of the service area under its Certificate of Convenience and Necessity to include the area
26 described in Exhibit A attached hereto and incorporated herein by reference be, and is hereby
27 approved, subject to the conditions more fully described herein.

28 IT IS FURTHER ORDERED that the current rates and charges set forth in the tariffs of

1 Johnson Utilities Company shall be applied to all customers in the CC&N extension area approved
2 herein.

3 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control,
4 as a compliance item in this docket, a copy of the ADEQ Approval to Construct for the water system
5 backbone facilities within 24 months of the effective date of this Decision.

6 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control,
7 as a compliance item in this docket, a copy of the ADEQ Approval to Construct for the wastewater
8 system backbone facilities within 24 months of the effective date of this Decision.

9 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control,
10 as a compliance item in this docket, a copy of the CAAG Section 208 Plan Amendment for the
11 Section 11 wastewater treatment plant within 24 months of the effective date of this Decision.

12 IT IS FURTHER ORDERED that Johnson Utilities Company shall file with Docket Control,
13 as a compliance item in this docket, a copy of the Aquifer Protection Permit and CAAG Section 208
14 Plan Amendment for the Copper Basin Regional Wastewater Treatment Facility, with 24 months of
15 the effective date of this Decision.

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1 IT IS FURTHER ORDERED that in the event Johnson Utilities Company fails to comply
2 with the above-stated conditions within the times specified, the CC&N extension approved herein
3 shall, after due process, be deemed null and void.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7
8 CHAIRMAN

COMMISSIONER

9
10
11 COMMISSIONER

COMMISSIONER

COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Director of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this ____ day of _____, 2006.

18 _____
19 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

20 DISSENT _____

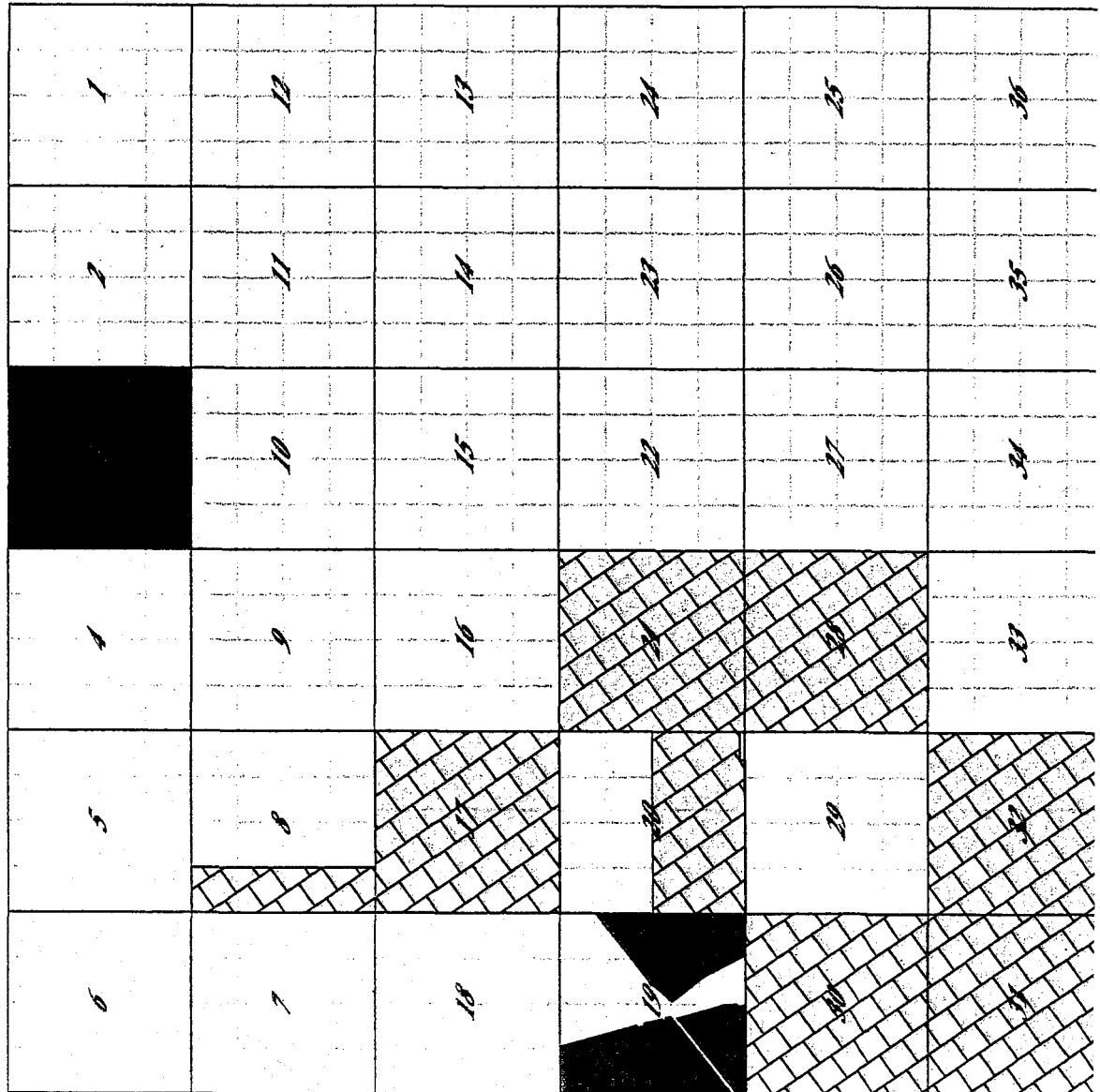
21
22 DISSENT _____


1 SERVICE LIST FOR: JOHNSON UTILITIES COMPANY
2 DOCKET NO.: WS-02987A-05-0695
3 Daniel Hodges
4 Johnson Utilities, L.L.C.
5 5230 East Shea Blvd.
6 Scottsdale, AZ 85254
7 Richard L. Sallquist
8 SALLQUIST, DRUMMOND & O'CONNOR
9 4500 South Lakeshore Drive, Ste. 339
10 Tempe, AZ 85282
11 Christopher Kempley, Chief Counsel
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007
16 Ernest G. Johnson, Director
17 Utilities Division
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington
20 Phoenix, AZ 85007
21
22
23
24
25
26
27
28


COUINTER Pinal


RANGE 9 East


TOWNSHIP 3 South



 WS-2987 (6)
Johnson Utilities Company

 Sewer

 Johnson Utilities Company
Docket No. WS-02987A-04-0288
Application for Extension for Water & Sewer

 Johnson Utilities Company
Docket No. WS-02987A-05-0695
Application for Extension for Water & Sewer

Legal Description of the Requested Area

ALL OF SECTION 3, TOWNSHIP 3 SOUTH, RANGE 9 EAST OF THE GILA AND
SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA